IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1884 of 2002

Standard Chartered Grindlays Bank .. Petitioner

versus

Mr.Jaydeep M. Surti & Anr. .. Respondents

...

Mr.J.P. Cama i/b RMG Law Associates for the petitioner.

Mr.C.U Singh with Sunil Dighe for the respondent no.1.

CORAM : D.G. KARNIK,J.

DATED : 13th June 2005.

P.C.:

1. Heard learned counsel for the parties.

2. The order of the Industrial Tribunal dated 15th July 2002 directing the petitioner to pay the subsistence allowance of Rs.5,000/- to the respondent

no.1 is challenged in this petition.

3. Petitioner is a banking Company carrying on business of Banking, interalia, in India. The respondent no.1 is an employee of the petitioner and an office bearer as the union representing the workmen of the petitioner Bank. By a transfer order dated 5th June 2000, the petitioner sought to transfer the respondent no.1 from a branch to a newly created Resource Management Centre. (for short "the RMC"). The respondent no.1 refused to accept the transfer order and declined to report for duty at the RMC. The petitioner therefore issued a charge-sheet to the first respondent on 8th June 2000. In the Departmental Enquiry that followed the charge-sheet, the respondent no.1 was found guilty of misconduct of not reporting for duty at the RMC. A second show cause notice was issued to the respondent no.1 on 4th April 2001 proposing the punishment of termination. Since a reference relating to an Industrial Disputes was then pending adjudication before the Tribunal, the petitioner made an application under section 33(1) of the Industrial Disputes Act (for short 'the Act') for permission for termination of the services of the respondent no.1. While opposing the said

application the respondent no.1 made an interlocutory application for payment of a subsistence allowance during the pendency of the application. By an order dated 15th July 2002, the Tribunal directed the petitioner to pay subsistence allowance of Rs.5,000/- p.m. to the respondent no.1 pending the hearing of the application. That order is impugned in this writ petition.

4. During the pendency of the present Writ Petition, main application of the petitioner for permission to terminate the services of the respondent no.1 on the ground of misconduct by not reporting for duty for RMC was heard. After hearing, it was held that the action of the petitioner in establishment of the RMC was not bonafide and was made for the purpose of victimising the workmen. The order transferring the respondent no.1 and others to the RMC was held to be bad-in-law. That order was upheld by this Court, The Special Leave Petition against the judgement and order of this Court was also dismissed. The application made by the petitioner for permission of termination of the services of the respondent no.1 u/s.33(1) of the Act was also dismissed.

5. The impugned order was interlocutory and directed payment of subsistence allowance only till the final disposal of the Main Application for permission under section 33(1)0 of the Act for termination of service of the respondent no.1. Since the Main Application has since been decided the order has come to an end. In my view, to test the validity of the impugned order at this stage has become academic. There is one more reason for me to interfere in the impugned order in this Writ Petition. The impugned order arose of the dispute relating to creation of the RMC and transfer of the respondent no.1 to the RMC. The action of the petitioner in creating the RMC has been held to be malafide and bad in law. Hence, it is not necessary to interfere in exercise of a writ jurisdiction in the interlocutory order for payment of a subsistence allowance passed by the Tribunal. Writ jurisdiction cannot be exercised to aid a person in his pursuit of malafide actions.

6. For these reasons, Writ Petition is dismissed with costs.

D.G. KARNIK, J